



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 26, 1995

Mr. John R. Speed, P.E.  
Executive Director  
Texas State Board of Registration  
for Professional Engineers  
P.O. Drawer 18329  
Austin, Texas 78760-8329

OR96-0086

Dear Mr. Speed:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#37914.

The Texas State Board of Registration for Professional Engineers (the "board") received a request for the "name and address and phone number of the individual or individuals who filed a complaint against the Diboll Independent school District with the board." You have submitted a representative sample of the requested records for our review and claim that the name of the complainant is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law right of privacy.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Open Records Letter No. 55-917 (1995) notes that the Texas Engineering Practice Act (the "Act"), article 3271a, V.T.C.S., contains no provision making the identity of complainants confidential. Additionally, it notes a governmental body may not pass an ordinance or rule purporting to make certain information confidential unless the governmental body is statutorily authorized to do so. Open Records Decision No. 594 (1991) at 3. Because article 3271a, V.T.C.S., contains no provision that makes confidential the identity of complainants, this office ruled that the board could not withhold the information pursuant to section 552.101 in conjunction with a rule purporting to make certain information confidential.

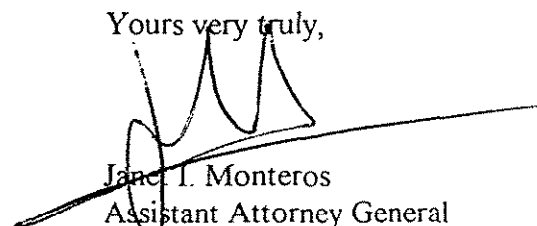
You now ask whether the informer's privilege or common-law privacy except the complainant's name from disclosure. The informer's privilege protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. Furthermore, once the identity of the informer is known to the subject of the

communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2.

We agree that the informer's privilege may apply when complaints allege illegal conduct. You assert that the complainant alleges violation of sections 19<sup>1</sup> and 23 of the Act. An offense under those subsections is a class A misdemeanor.<sup>2</sup> You submitted copies of the complaint and the investigators notes in which the complainant requests anonymity. Because the complaint alleges violations of the law, you may withhold the identity and information tending to identify this complainant pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege. Since you may withhold the information requested under the informer's privilege, we do not address your arguments under common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/ch

Ref.: ID#37914

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<sup>1</sup> Subsection Sec. 19.(a) provides:

It is unlawful for this State or for any of its political subdivisions, including any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer. However nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure of the completed project does not exceed Eight Thousand (\$8,000.00) Dollars.

<sup>2</sup>Subsection 23(a) provides

any person who shall practice, or offer to practice, the profession of engineering in this State without being registered or exempted from registration in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall violate any of the provisions of this Act, commits an offense.

Mr. John R. Speed, P.E. - Page 3

Enclosures: Submitted documents

cc: Ms. Carolyn S. Sewell  
Diboll Independent School District  
P.O. Box 550  
Diboll, Texas 75941  
(w/o enclosures)